

CHANGES TO FOREIGN INVESTMENT RULES RESIDENTIAL PROPERTY



On 24 April 2010 the Assistant Treasurer announced a tightening of the foreign investment rules for residential property. The changes include a package of penalties to ensure compliance.

The new Federal Government Policy reverses the relaxation last year of foreign investment rules. Those changes made it easier for foreign nationals to buy residential property in Australia because acquisitions of new dwellings by temporary residents like students and workers temporarily employed in Australia, did not require approval.

The current changes apply from 24 April 2010 and require that all temporary residents seek approval to purchase vacant land on which to build, new dwellings or established (second hand) dwellings to be used as their principal place of residence.

Generally, if approval to buy an established dwelling is granted to a temporary resident, it will be subject to a condition that the temporary resident sells the property when it ceases to be their principal place of residence. Applications to buy established dwellings for investment purposes will not be approved. If vacant land is purchased construction must commence within 24 months of the acquisition or the land will be compulsorily sold.

The press release states that the new rules are designed to ensure that housing stock in Australia is available for residents and is not owned by former residents of Australia.

The Federal Government has also announced a full civil penalties regime for breaches of foreign investment rules.

This will include sanctions for all purchasers, vendors and agents involved in transactions which breach the rules, a compulsory divestment of property if it is purchased in breach of the rules and a monetary penalty to capture any capital gain made through an illegal purchase and sale of a property.

A new national data matching compliance monitoring program will be introduced to improve compliance by real estate agents. The monitoring will provide data matching using FIRB data, State and Territory lands and property office transactional data and Commonwealth Department of Immigration and Citizenship visa status data. Treasury indicated that trials were already underway in Sydney and Melbourne. There will also be a free 1800 line so members of the public can call directly with any information about possible breaches.

We will issue a further E-Alert when details have been finalised about:

- the changes to the rules;
- how the penalty regime will operate;
- the effect of monitoring; and
- how the memorandum of understanding between the FIRB and each State regulator has been settled.

These changes have particular impact on real estate agents and any temporary residents who are considering purchasing a property in Australia.

Contacts

If you would to discuss any of the issues raised in this update or require further information, please contact

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